

**Assembly Bill No. 1038**

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Passed the Assembly    September 2, 2003

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*Chief Clerk of the Assembly*

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Passed the Senate    August 27, 2003

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to amend Sections 45207 and 88207 of, and to add Section 45120.2 to, the Education Code, relating to classified school employees.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1038, Negrete McLeod. Classified school employees.

(1) Existing law requires the governing board of a school district to submit to the Superintendent of Public Instruction a local plan for the education of individuals with exceptional needs residing in the district on its own or in conjunction with one or more districts, or to join with the county office of education to submit a plan to the Superintendent of Public Instruction that assures access to special education and services for all individuals with exceptional needs residing in the geographic area served by the plan. Existing law requires the plan for special education to be developed and updated cooperatively by a committee of representatives of special education and regular teachers and administrators and with participation by parents, to ensure adequate and effective participation and communication.

This bill would set forth the employment rights of classified employees who are terminated, reassigned, or transferred, or become the employee of another employer as a result of the development or revision of a local plan for the education of individuals with exceptional needs.

(2) Existing law authorizes a probationary or permanent classified school or community college employee to use up to 7 earned days of absence for illness or injury per school year in cases of personal necessity and requires the governing board of the school district or community college district to adopt rules and regulations requiring and prescribing the manner of proof of personal necessity.

This bill would prohibit the rules and regulations from requiring an employee to secure advance permission for personal necessity leave taken for the death of a member of his or her immediate family or accident involving the person or property of the employee or a member of his or her immediate family. The bill would authorize the use of more than 7 days of earned leave for



illness or injury if so specified in an agreement between the exclusive representative of the employees and the school district or, if there is no exclusive representative, the governing board adopts a policy allowing the use of more than 7 days of earned leave for personal necessity.

*The people of the State of California do enact as follows:*

SECTION 1. Section 45120.2 is added to the Education Code, to read:

45120.2. (a) If the development or revision of a local plan for the education of individuals with exceptional needs pursuant to Chapter 2.5 (commencing with Section 56195) of Part 30, results in a classified employee who is performing service for one employer being terminated, reassigned, or transferred, or becoming the employee of another employer because of the reorganization of special education programs, the employee shall retain the seniority acquired at his or her employment with the school district or county office of education from which he or she was terminated, reassigned, or transferred. If terminated, the employee retains the rights specified in Sections 45115, 45117, and 45119.

(b) The reassignment of an employee, transfer of an employee, or new employment of an employee caused by the reorganization of special education programs does not affect the seniority or classification that a classified employee already attained in any school district that undergoes the reorganization. The employee has the same status with respect to his or her seniority or classification, with the new employer, including time served as a probationary employee. The total number of years served as a classified employee with the former school district or county office shall be credited, year for year, for placement on the salary schedule of the new school district or county office.

(c) If a local plan for the education of individuals with exceptional needs is developed or revised pursuant to Chapter 2.5 (commencing with Section 56195) of Part 30, all classified employees shall be employed by a county office of education or an individual school district.

(d) A classified employee who is reassigned or transferred as a result of the reorganization of special education programs has



priority, except as provided in subdivision (e), in being informed of and in filling classified positions in the classifications in which the employee was employed before the reassignment or transfer. This priority expires 24 months after the date of reassignment or transfer and may be waived by the employee during that time period.

(e) A classified employee who served in a special education program in a school district or county office and is terminated from his or her employment by that school district or county office pursuant to Section 45114 as a result of the reorganization of a special education program has first priority in being informed of and in filling vacant classified positions for which the employee is qualified or was employed, in the county office or school district that operates the reorganized special education program. Permanent employees have the first priority right to reappointment as provided in this section for 39 months from the date of termination. Probationary employees have the first priority right to reappointment as provided in this section for 24 months from the date of termination.

SEC. 2. Section 45207 of the Education Code is amended to read:

45207. (a) A probationary or permanent employee may, at his or her election, use any days of absence for illness or injury earned pursuant to Section 45191 in cases of personal necessity, including any of the following:

(1) Death of a member of his or her immediate family when additional leave is required beyond that provided in Section 45194 and that provided, in addition thereto, as a right by the governing board.

(2) Accident, involving his or her person or property, or the person or property of a member of his or her immediate family.

(3) Appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or any order made with jurisdiction.

(4) Other reasons that the governing board may prescribe.

(b) The governing board of each school district shall adopt rules and regulations requiring and prescribing the manner of proof of personal necessity for the purpose of this section. The adopted rules and regulations may not require an employee to secure advance permission for leave taken for the purposes



specified in paragraphs (1) and (2) of subdivision (a). Earned leave in excess of seven days may not be used in any school year for the purposes enumerated in this section, except if either of the following conditions exist:

(1) A maximum number of days in excess of seven is specified for that purpose in an agreement between the exclusive representative of the employees and the school district.

(2) If there is no exclusive representative of the employees, the governing board of the school district, by resolution, adopts a policy allowing earned leave in excess of seven days to be used in any school year for the purposes enumerated in this section.

(c) Authorized necessity leave shall be deducted from sick leave earned under the exemption of Section 45191.

(d) “Immediate family” has the same meaning as in Section 45194.

(e) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) and to school districts that may be exempted from Section 45191.

SEC. 3. Section 88207 of the Education Code is amended to read:

88207. (a) A contract or regular employee may, at the employee’s election, use any days of absence for illness or injury earned pursuant to Section 88191 in cases of personal necessity, including any of the following:

(1) Death of a member of the employee’s immediate family when additional leave is required beyond that provided both in Section 88194 and as a right by the governing board.

(2) Accident involving the person or property of the employee or of a member of his or her immediate family.

(3) Appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or any order made with jurisdiction.

(4) Any other reasons that the governing board may prescribe.

(b) The governing board of each community college district shall adopt rules and regulations requiring and prescribing the manner of proof of personal necessity for the purpose of this section. The adopted rules and regulations may not require an employee to secure advance permission for leave taken for the purposes specified in paragraphs (1) and (2) of subdivision (a).



Earned leave in excess of seven days may not be used in any college year for the purposes enumerated in this section except if either of the following conditions exist:

(1) A maximum number of days in excess of seven is specified for that purpose in an agreement between the exclusive representative of the employees and the community college district.

(2) If there is no exclusive representative of the employees, the governing board of the community college district, by resolution, adopts a policy allowing earned leave in excess of seven days to be used in any school year for the purposes enumerated in this section.

(c) Authorized necessity leave shall be deducted from sick leave earned under the exemption of Section 88191.

(d) For purposes of this section, “immediate family” has the same meaning as in Section 88194.

(e) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) and to community college districts that may be exempted from Section 88191.



Approved \_\_\_\_\_, 2003

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*Governor*

